FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6168 OF 2005

Office notes, office Memoranda of appearances, Court's orders or directions & Registrar's orders.	: Coram, : : : :	Court's or Judge's Orders .

Mr. H.S. Venegaokar for petitioner

Mr. A. B. Borkar for R-1 to 3

CORAM: SMT. RANJANA DESAI, J.
20/9/2005

P.C.:-

The petitioner is the original plaintiff. He filed a suit being Special Civil Suit kNo. 142/05 for partition in the court of Civil Judge, Senior Division, Kolhapur.

2. The case of the petitioner is that the land and the house in question are the ancestral property of the petitioner and the defendants. The case of the defendants on the other hand is that the suit property is the self acquired property of deceased Ramchandra the brother of the

petitioner.

3. In this suit the plaintiff filed an application praying that the defendants be restrained from interfering with and obstructing the possession of the plaintiff by making permanent construction in the suit property. That application was rejected by the trial court. Appeal carried from the said order was also dismissed by the lower appellate court and hence this writ petition.

4. I have heard the learned counsel for the petitioner at some length. He contended that whereas the defendant came out with a case that the suit property was not ancestral property but was self acquired property of deceased Ramchandra the brother of the petitioner, the defendants later on relied upon the statement of the petitioner made before City Survey Officer indicating that there was in fact partition of the suit property and the suit property is ancestral property. The

learned counsel urged that, therefore, defendants have come out with a contradictory case which reflects on the defendants bonafide. The learned counsel further contended that on 15/5/05 the respondent 2 started construction. But the petitioner had obtained status quo order which was in operation till 14/9/05. He submitted that in the circumstances of the case, the impugned order deserves to be reversed. He submitted that if that is not possible the parties may be asked to maintain status quo till the disposal of the suit.

5. The learned counsel for the respondent on the other hand submitted that the prima facie concurrent finding of fact of both the courts ought not to be interfered in the writ jurisdiction. He submitted that the petitioners are guilty of suppression of the fact that there was prelvious petition.

6. Rather than going into the merits of the rival contentions, in my

opinion, the following order should meet the ends of justice;

(a) Special Suit No. 142/05 pending on the file of Civil Judge, Senior Division, Kolhapur is expedited. The trial court is directed to hear and disposed of the suit within one and half years from the date of receipt of this order by it. This court has not expressed any opinion on the merits of the case.

(b) The construction carried out by the defendants will be subject to the final decision of the suit. The defendants shall file an undertaking in the trial court that till such time as the suit is heard and disposed of they shall not sell, alienate the suit property or create any third party interest therein.

(c) The impugned order stands modified to this extent.

(d) Writ petition is disposed of.

MSS

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